



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: DECEMBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 625796

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 625794, 625795 and 625796, the employer appeals from the decisions of the Administrative Law Judge filed September 8, 2022, which overruled the initial determinations disqualifying the claimant from receiving benefits, effective December 13, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$10,400 in benefits recoverable pursuant to Labor Law § 597 (4), \$8,400 in Federal Pandemic Unemployment Compensation

(FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid,

Relief, and Economic Security (CARES) Act of 2020, and Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$800 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,940 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the employer contends that the claimant's supervisor, Yolanda, did not lay off the claimant, but that the claimant wanted to go to the Dominican Republic and quit. The Board has determined that further testimony and evidence should be taken from the claimant's supervisor, as well

as from the store manager, JK Sung. The employer should produce the claimant's supervisor and the store manager to testify in this matter. The store manager and the claimant's supervisor should be questioned regarding the claimant's separation, any conversations each had with the claimant prior to her separation, who was present for these conversations, whether the conversations were in Spanish or were interpreted for the claimant, and who has authority to layoff or terminate employment. The Judge shall take any additional relevant testimony as needed.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER